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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 TRACY ANDERSON MIND AND
18 BODY, LLC, a Delaware limited
19 liability company; and T.A. STUDIO
20 NEW YORK LLC, a California limited
21 liability company,

22 Plaintiffs,

23 v.

24 MEGAN ROUP, an individual; and
25 THE SCULPT SOCIETY, LLC, a
26 California limited liability company,

27 Defendants.

Case No. 2:22-cv-04735-RSWL-E

Hon. Ronald S.W. Lew

**DEFENDANTS MEGAN ROUP
AND THE SCULPT SOCIETY,
LLC'S REPLY IN SUPPORT OF
MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT AND SPECIAL
MOTION TO STRIKE (ANTI-
SLAPP)**

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1 **I. INTRODUCTION**

2 Anderson’s Opposition contorts the case law, ignores the FAC’s fatal
3 concessions, and asks the Court to blindly accept the implausible. Her protestations
4 notwithstanding, this is an easy case. Anderson’s copyright claim fails because her
5 “Method” is noncopyrightable as an “idea, procedure, process, [or] system” under 17
6 U.S.C. § 102(b), the FAC does not allege protectable choreography under 17 U.S.C.
7 § 102(a)(4), and it is barred by the Ninth Circuit’s holding in *Bikram*. Her Lanham
8 Act claim targets innocuous, immaterial statements that do not plausibly support the
9 inferences she alleges. Her contract claim attempts to enforce an oppressive
10 confidentiality covenant in violation of California Business & Professions Code
11 § 16600, even though Anderson has publicly disclosed her “Method.” And her UCL
12 claim fails because it is derivative of these failed Lanham Act and contract claims.

13 Therefore, all of Anderson’s claims should be dismissed with prejudice and
14 the UCL claim struck under California’s anti-SLAPP law because it is a meritless
15 attack on Roup’s exercise of her free speech rights on a matter of public interest, and
16 is not remotely covered by the inapplicable and narrow commercial speech
17 exemption. Defendants’ Motion should be granted in its entirety.

18 **II. ARGUMENT**

19 **A. Anderson’s Copyright Claim Fails as a Matter of Law**

20 In her Opposition, Anderson argues that her self-described “fitness” protocol
21 contains protectable choreography and that *Bikram’s Yoga College of India, L.P. v.*
22 *Evolution Yoga, LLC*, 803 F.3d 1032 (2015) is distinguishable. Both arguments fail.

23 **1. The FAC Concedes Anderson’s Method and Exercises Are**
24 **Not Protectable**

25 A. Anderson’s FAC repeatedly concedes the unprotectable nature of the “TA
26 Method” as fundamentally a “fitness” protocol, marketed to consumers who seek to
27 improve their physical and mental well-being.¹ For instance, the FAC admits that:

28 ¹ A simple visit to Anderson’s own website biography confirms the same, touting her
as a “Fitness Pioneer” whose “revolutionary method can give anyone—regardless of

- Anderson is “a pioneer of the choreography-based *fitness* movement” by developing the TA Method. FAC ¶ 1 (emphasis added).
- “TAMB . . . offers choreography-based *fitness* and *mat movement classes*.” *Id.* ¶ 2 (emphases added); *see also* ¶ 23.
- “TANY, part of Anderson’s companies that revolutionized choreography-based *fitness*.” *Id.* ¶ 7 (emphasis added); *see also* ¶ 41.
- “the TA Method has become one of the premier choreography-based *fitness* programs in the world.” *Id.* ¶ 23 (emphasis added).

Likewise, the titles of the DVDs upon which Anderson bases her copyright claim include such fitness, exercise, and workout descriptors as “Dance Cardio *Workout* DVD,” “Mat *Workout* DVD,” “Post-Pregnancy *Workout* DVD,” “Metamorphosis by Tracy – *Abcentric*,” “Metamorphosis by Tracy – *Glutecentric*,” “Total Body Mini-Trampoline *Workout*,” and “Precision *Toning*.” Dkt. 12, pp. 24-25 (emphases added).

Each of these foundational allegations dooms Anderson’s effort to recast her workouts as protectable choreography—a made-for-litigation attempt that collapses under the weight of the FAC’s contrary, dispositive concessions.

B. Moreover, Anderson’s assertion that hers is a “choreography-based” fitness program is a far cry from the type of actual choreography that Section 102(a) of the Copyright Act protects. The Compendium, which Anderson selectively cites, repeatedly undercuts her argument, confirming the type of art form that Congress sought to protect: “When Congress extended federal copyright protection to choreography, it intended to protect expressive works of authorship, *such as ballet or modern dance*.” U.S. Copyright Office, Compendium of U.S. Copyright Office Practices § 805.5(B) (3d ed. 2021) (emphasis added). Indeed, “a work of authorship cannot be registered as a choreographic work unless it is comprised of dance steps,

their genetic background—the physical and mental results they desire[,]” and makes no mention of choreography or of Anderson as a choreographer. *See* “The Method,” <https://tracyanderson.com/about-tracy-anderson/> (last accessed October 17, 2022).

1 dance movements, and/or dance patterns.” *Id.* § 805.5(B)(3). A single dance step or
2 a short dance routine is not enough to warrant copyright protection. *Id.* § 805.5(A)
3 (“the second position in classical ballet” is not copyrightable). Examples of protected
4 choreography include a “complex dance production” and “complex and intricate”
5 choreography for a music video to be performed by a troupe of professional dancers.
6 *Id.* §§ 805.4(D), 805.5(A).

7 On the other hand, “[n]on-expressive physical movements, such as ‘ordinary
8 motor activities’ or ‘*functional physical movements*’—in and of themselves—do not
9 represent the type of authorship that Congress intended to protect as choreography.”
10 *Id.* § 805.5(B)(3) (emphasis added). Non-expressive works that are ineligible for
11 copyright include “*exercise routines, aerobic dances, yoga positions, and the like.*”
12 *Id.* § 806.5(B) (emphasis added). The TA Method is not remotely or plausibly
13 protectable choreography under these standards. Rather, it is an exercise protocol
14 taught by fitness instructors to be copied by members of the public to improve health
15 outcomes. FAC ¶¶ 1, 19, 20-24.

16 Nor does Anderson even define the supposed choreography in the TA Works
17 that she seeks to protect: is it a dance sequence in one of the DVDs she has
18 copyrighted—not as a choreographic work, but as a “motion picture (DVD)” —that
19 bear titles like “Post-Pregnancy Workout”? If so, which dance steps does the
20 sequence include, which of Defendants’ sequences in the more than 400 videos that
21 Anderson cites (FAC ¶ 37) supposedly copies it, and in what way? Or is it all 200,000
22 “movements” Anderson claims to have developed as part of the TA Method?
23 Anderson’s FAC sheds no light, and her bare allegations that the TA Method is
24 “choreography-based”—without putting Defendants on notice of what the
25 choreography is, where it appears, and which of Defendants’ videos allegedly copies
26 it or how—are woefully insufficient and warrant dismissal.² *See Four Navy Seals v.*

27 ² Indeed, the only movement that Anderson has specified in her FAC—which is not
28 contained in her videos but is rather a “transcription” for which she has no copyright
registration—is precisely the type of unprotectable functional movement that can

1 *Associated Press*, 413 F. Supp. 2d 1136, 1148 (S.D. Cal. 2005) (“Merely asserting
2 that, of 1800 photographs . . . at least one unidentified photograph has been
3 copyrighted . . . and was distributed by Defendants does not put Defendants or the
4 Court on sufficient notice of the copyright claim.”); *Blizzard Ent., Inc. v. Lilith*
5 *Games (Shanghai) Co.*, 149 F. Supp. 3d 1167, 1175 (N.D. Cal. 2015) (granting
6 motion to dismiss copyright infringement claim, as “[a]bsent such representative acts
7 of infringement,” general allegations were insufficient for court to “meaningfully
8 evaluate” the alleged appropriation).

9 Worse still, Anderson has failed to allege that any choreography contained in
10 the TA Works is *original*—a necessary prerequisite to pleading copyright
11 infringement, Mem. p. 7 (quoting *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S.
12 340, 361 (1991))—as opposed to standard workout movements or steps borrowed
13 from other dance-cardio instructors. Absent a showing of originality sufficient to put
14 the Court and Defendants on notice of Anderson’s claim, her claim fails.

15 In the face of the FAC’s concessions about the true “fitness” nature of
16 Anderson’s method, she argues that invoking the word “choreography” is sufficiently
17 talismanic to get her past this Court’s scrutiny on a motion to dismiss. Anderson is
18 incorrect. Whether a plaintiff has pleaded a plausibly protectable work or a
19 noncopyrightable system, process, method or idea under Section 102(b) is indeed for
20 the Court to determine as a matter of law on a Rule 12(b)(6) motion. Mem. pp. 8-10
21 (citing *Daniels v. Walt Disney Co.*, 958 F.3d 767, 771-74 (9th Cir. 2020) (affirming
22 district court’s dismissal of complaint for failure to plead copyrightable subject
23 matter); *Pilkin v. Google LLC*, 2021 WL 3604677, at *3 (N.D. Cal. Aug. 13, 2021),
24 *aff’d*, 2022 WL 1223992 (9th Cir. Apr. 26, 2022) (same)). Thus, the TA Method or

25 _____
26 never be protectable as choreography under 17 U.S.C. § 102(a)(4): *i.e.*, “Face NW
27 side, W elbow down, resting on knees with shins and feet up. [E]xtend NW leg to
28 high straight back parallel arabesque, return to starting position, lift W leg to side fire
hydrant and return to start.” FAC ¶ 31; *see Hanagami v. Epic Games Inc.*, 2022 WL
4007874, at *5 (C.D. Cal. Aug. 24, 2022) (dismissing copyright claim where plaintiff
failed to allege unlawful appropriation; finding short dance routine not protectible).

1 the videos that comprise it are not choreographic works and the Court can so hold as
2 a matter of law.

3 **2. *Bikram* Forecloses Anderson’s Attempt to Label Her Fitness**
4 **Method as Protectable Choreography**

5 Having conceded that the TA Method and the works embodying it are
6 fundamentally a “fitness” program, no amount of characterizing them as
7 “choreography” or “choreography-based” can turn them into something protectable.
8 This is the precise holding and lesson of *Bikram*.

9 The Copyright Act excludes protection for “any idea, procedure, process,
10 system, method of operation, concept, principle, or discovery.” 17 U.S.C. § 102(b).
11 In *Bikram*, the Ninth Circuit confronted the precise issue here, where a plaintiff
12 attempted to avoid Section 102(b)’s bar on the noncopyrightability of functional,
13 exercise-related methods and processes via artful labeling. In rejecting Choudhury’s
14 attempt to define his Sequence as “choreography” in order to obtain copyright
15 protection over it, the Ninth Circuit concluded that parties like Choudhury and
16 Anderson cannot “obtain monopoly rights over [] functional physical sequences *by*
17 *describing them in a tangible medium of expression and labeling them*
18 *choreographic works.*” *Bikram*, 803 F.3d at 1044 (emphasis added). Yet this is
19 precisely what Anderson attempts here.

20 A. In her Opposition, Anderson seeks to establish unspecified portions of the
21 TA Method as “expressive” and asserts that her Method contains protectable
22 choreographic works because “each of Anderson’s routines constitutes a related
23 series of movements organized into an integrated, coherent, and expressive whole.”
24 Opp. p. 8 (quoting FAC ¶ 19). But these efforts run up against the FAC’s inescapable
25 description of her method as fundamentally a “fitness” program, as explained above.
26 See FAC ¶¶ 1, 2, 7, 23, 41. Adding the qualifier “choreography-based”—an apparent
27 stand-in for the term “dance cardio” that, unlike “choreography,” actually appears in
28 the title of some of the TA Works—merely describes *a type* of fitness program, it

1 does not plausibly alter it. Anderson cites no case that permits her to protect any
2 choreography within an unprotectable system, and her attempts to draw parallels to
3 cases about actual choreography, like *Horgan v. Macmillan, Inc.*, 789 F.2d 157 (2d
4 Cir. 1986), do not help her.

5 Rather, in rejecting Choudhury’s effort to label the Sequence a “choreographic
6 work,” the Ninth Circuit “recognize[d] that the Sequence may involve ‘static and
7 kinetic successions of bodily movement in certain rhythmic and spatial
8 relationships.’ Compendium II, § 450.01, [but s]uch movements do not become
9 copyrightable as ‘choreographic works’ when they are part and parcel of a process.”
10 *Bikram*, 803 F.3d at 1044. Thus, the Court held, “[e]ven if the Sequence could fit
11 within some colloquial definitions of dance or choreography, it remains a process
12 ineligible for copyright protection.” *Id.* This is what Anderson attempts: to elevate
13 kinetic dance-cardio exercise movements to “choreography” through labeling. But
14 because the FAC lays bare the true nature of her method as a “fitness” protocol,
15 *Bikram* forecloses her claim.

16 B. Anderson attempts to find refuge in *Children’s Cerebral Palsy Movement*,
17 *Inc. v. Sawitz*, 2018 WL 6340754 (C.D. Cal. Nov. 16, 2018), a unpublished case that
18 does not help her. Specifically, Anderson asserts that merely because she has
19 described portions of the TA Method as choreographic, that is the end of the matter.
20 But *Sawitz* is both distinguishable and forecloses Anderson’s claim all on its own.
21 The subject matter in *Sawitz* was first and foremost a “Ballet,” not an exercise
22 routine; and it was a dispute about potential copyright ownership, not an infringement
23 action based on registered works. *Id.* at *1-2. Moreover, the court acknowledged
24 that “copyright protection *does not extend to exercise routines*, which are primarily
25 functional and performed to receive purported health, emotional, or mental benefits.”
26 *Id.* at *4 (emphasis added). Anderson’s exercise method is distinguishable from the
27 ballet in *Sawitz*, and equally unprotectable under the reasoning of that case and
28 *Bikram*. And while decided on summary judgment, *Bikram* instructs that, no matter

1 the stage of the case, courts must look to the true nature of what the plaintiff seeks to
2 enforce under the copyright laws to determine if it is protectable subject matter.

3 At bottom, what Anderson attempts is as radical as it is foreclosed by *Bikram*:
4 attempting to skirt 17 U.S.C. § 102(b) through conclusory, implausible pleading that
5 the Court need not accept (and which is contradicted by the FAC in any event). It
6 would elevate dance-based exercise over any other form of exercise by allowing its
7 practitioners to claim protection of choreographic elements through the distribution
8 of instructional workout videos. Nothing in the Copyright Act or the case law permits
9 such a result. To the contrary, the Ninth Circuit recognized the danger of such a
10 monopolistic approach in *Bikram* and foreclosed it.

11 **B. Anderson’s Lanham Act Claim Fails Because She Has Not Alleged**
12 **Any Actionable False or Misleading Statements**

13 Anderson bases her Lanham Act claim on two sentences in Roup’s online
14 biography in which Roup states that she developed TSS because there was something
15 “missing from the boutique fitness community” and that she “spent years . . .
16 developing The Sculpt Society method.” See FAC ¶ 43; Dkt. 15-2, Ex. C. Anderson
17 alleges that these statements are misleading because they imply that (i) Roup
18 developed TSS over multiple years “when she did not”; (ii) TSS “was created through
19 years of science-based research, development, data collection and analysis, and trial
20 and error,” “when it was not”; and (iii) TSS is significantly different from the TA
21 Method, “when it is not.” FAC ¶ 59. In her Opposition, Anderson all but abandons
22 her reliance on the third “implied” inference. But, as Defendants explained in their
23 Motion, the statements in Roup’s online biography are opinion, puffery, immaterial,
24 and not susceptible of the inferences alleged; and Anderson’s claim is just a barred
25 “false designation of origin” authorship claim in disguise.

26 **1. The Statements Are Not Plausibly False, Misleading, or**
27 **Material**

28 A. The first challenged sentence—“I knew that there was something missing
from the boutique fitness community, so I combined my passion for dance and love

1 for fitness to create The Sculpt Society”—is a classic example of nonactionable
2 opinion, and Anderson fails to explain how it could plausibly be anything else.
3 Indeed, she does not even try. *See* Opp. pp. 10-12 (only arguing puffery). Both this
4 and the second sentence are also nonactionable puffery, which covers statements that
5 are “either vague or highly subjective.” *Cook, Perkiss and Liehe, Inc. v. Northern*
6 *Cal. Collection Serv. Inc.*, 911 F.2d 242, 246 (9th Cir. 1990) (citation and internal
7 quotation marks omitted). Only statements that misrepresent “specific or absolute
8 characteristics of a product are actionable.” *Id.* at 246 (citation and internal quotation
9 marks omitted).

10 As explained in Defendants’ Motion, an assertion that a defendant’s product is
11 “unlike any other layering options,” that it “invented” a product, and its product fills
12 a “white space” in the market “does not amount to an assertion of fact” and is both
13 non-material and puffery as a matter of law. *R and A Synergy LLC v. Spanx, Inc.*,
14 2019 WL 4390564, at *9-10 (C.D. Cal. May 1, 2019) (collecting cases). *R and A*
15 *Synergy* is squarely on point, and Anderson’s failure to explain why Roup’s
16 statements, like Spanx’s, are non-material speaks volumes. Indeed, Roup’s statement
17 that she created TSS because something was “missing” in the market, is virtually
18 indistinguishable from Spanx’s nonactionable statement that its product filled a
19 “white space” in the market.³

20 This leaves Anderson to argue that Roup’s statement that she developed TSS
21 over “years” is not puffery because it is quantifiable. But even if it were quantifiable
22 and false, Anderson fails to plausibly explain how it is *material*. Even accepting the
23 premise that “years” refers to the allegedly short period after she left TANY—as
24 opposed to the actual years Roup spent training, dancing, and teaching, as set forth

25 ³ Contra Anderson, Courts routinely vet allegedly false statements at the pleading
26 stage to determine whether they are susceptible of supporting a false advertising
27 claim or not as a matter of law, including assessing whether statements are puffery.
28 *R and A Synergy*, 2019 WL 4390564, at *10 (“The court may determine at the motion
to dismiss stage whether an alleged misrepresentation is a statement of fact or mere
puffery as a matter of law.”) (citing *Newcal Indus., Inc. v. Ikon Office Solution*, 513
F.3d 1038, 1053 (9th Cir. 2008)).

1 in her bio—Anderson does not explain how a potential customer would care if Roup
2 spent one month or twenty-four months developing TSS, particularly where Roup
3 makes no assertion that she engaged in years of testing or research (contrary to
4 Anderson’s implausible suggested inference). *See Bose Corp. v. Linear Design Labs,*
5 *Inc.*, 467 F.2d 304, 310-11 (2d Cir. 1972) (finding defendant’s claim that its
6 “countless hours of research” led to the superior quality of its stereo speakers to be
7 largely puffing). And because Roup’s statements are “mere puffery as a matter of
8 law, [it] necessarily means that reasonable consumers would not rely on the
9 statements when making purchasing decisions”—a determination that can indeed be
10 made as a matter of law. *R and A Synergy*, 2019 WL 4390564, at *12 (emphasis
11 added); *see also Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1145 (9th
12 Cir. 1997) (dismissing claim finding nonactionable puffery as “precisely the type of
13 generalized boasting upon which no reasonable buyer would rely”).

14 B. Here, there is no plausible link—and Anderson alleges none—between
15 Roup’s innocent biographical statements and consumer reliance in connection with
16 the decision to try TSS’s classes. The only allegations Anderson makes that nod in
17 this direction are the rave user reviews of Roup and TSS, but those show no plausible
18 link between the statements at issue (including the reference to “years”) and
19 consumers’ decision to purchase TSS classes. *See* FAC ¶ 44. Unsurprisingly, then,
20 in her Opposition, Anderson utterly fails to discuss these reviews or how they could
21 evidence reliance; and she points to nothing else in the FAC that could plausibly
22 support consumer reliance.

23 C. Anderson ascribes unsupported and implausible meanings to Roup’s
24 statements that need not be accepted on a motion to dismiss. She asserts that the two
25 biographical sentences “imply” that TSS is backed by science and is “significantly
26 different” than the TA Method. Again, Anderson alleges no basis to plausibly
27 conclude Roup implies these wild inferential leaps, or that the statements at issue are
28 literally false. *Universal City Studios, Inc. v. Sony Corp. of Am.*, is instructive. 429

1 F. Supp. 407, 409 (C.D. Cal. 1977) (noting that “conclusions of law and unwarranted
2 deductions of fact may not be drawn from the facts alleged in order to preclude
3 dismissal”). There, producers brought a Lanham Act claim against entities involved
4 in manufacturing and distributing the Betamax, which allowed consumers to record
5 plaintiffs’ shows and movies. *Id.* at 408. These advertisements stated that the
6 Betamax had the capacity to copy the broadcasted content. *Id.* at 408-09. The
7 plaintiffs alleged the ads were false and misleading because they implied that the
8 copying was done with plaintiffs’ consent and was legal. *Id.* at 409. But the court
9 refused to “credit as reasonable the inference plaintiffs claim is implicit in
10 defendants’ ads[,]” reasoning that “[s]ome inferences simply cannot be supported”
11 and “[t]o say that ‘this product is capable of copying television shows’ is simply not
12 the same as saying ‘when you use this product to copy television shows you are acting
13 legally.’” *Id.*

14 Here, too, Roup’s statements simply do not support the implausible inferential
15 leaps that Anderson suggests. Roup does not mention or allude to the TA Method,
16 and nothing about stating that she developed TSS over “years” supports the far-
17 fetched conclusion that she therefore must have created it through “science-based
18 research, development, data collection and analysis, and trial and error.” FAC ¶ 59.
19 Rather, the more immediate, plausible (and non-false, non-misleading) meaning is
20 exactly what Roup’s bio states before it: that she has been passionate about dance
21 her whole life, studied dance at NYU’s Tisch School of the Arts, and then lived and
22 worked as a dancer in New York where she worked for the Brooklyn Nets Dance
23 Team. Dkt. 15-2, Ex. C.

24 Because Defendants’ statements are immaterial opinion and puffery on which
25 no reasonable consumer would rely, and not capable of plausibly supporting the
26 inferences advanced, Anderson’s Lanham Act claim fails and should be dismissed
27 with prejudice. *Cook, Perkiss & Liehe, Inc.*, 911 F.2d at 247 (affirming district
28 court’s dismissal with prejudice; “[b]ecause it found that the advertisement was not

1 a factual representation and therefore not actionable, no amendment would have been
2 able to cure this defect”).

3 **2. *Dastar* and *Sybersound* Bar Anderson’s Claim**

4 Anderson insists that she does not bring a false authorship claim under Section
5 43(a)(1)(A) for the simple reason that she has brought her claim under Section
6 43(a)(1)(B). But false authorship claims are barred when brought under either
7 section, and mere labeling cannot overcome the substance of the claim. Indeed, the
8 FAC plainly confirms that Anderson’s Lanham Act claim is based, at least in part,
9 on the allegation that Defendants have misrepresented that they, and not Anderson,
10 are the creators of TSS’s sequences. *See, e.g.*, FAC ¶ 41 (alleging that Defendants
11 have not credited Anderson for allegedly “creating the choreography movements,
12 sequences, and routines that now comprise the TSS Method” and “do not reference
13 Roup’s training or association with TANY or Anderson on the TSS website, TSS
14 promotional materials, interviews, or appearances”); ¶ 42 (“Defendants purposefully
15 conceal Roup’s training from and association with TANY from the public so that
16 Roup can claim . . . the TSS Method is significantly different from the TA Method.”).
17 As explained in Defendants’ Motion, a plaintiff may not circumvent *Dastar*’s bar on
18 Section 43(a)(1)(A) false authorship claims by labeling the claim as brought under
19 Section 43(a)(1)(B). Mem. pp. 16-17. As Defendants’ cases show, that gambit has
20 been repeatedly tried (as it is here), seen through by the courts (including this Court
21 in *Cannarella v. Volvo Car USA LLC*, 2016 WL 9450451, at *7 (C.D. Cal. Dec. 12,
22 2016)), and rejected.

23 Anderson asserts that even if her Lanham Act claim is a false authorship claim
24 in disguise (which it is), it is nevertheless valid under *Dastar*. In so doing, Anderson
25 relies on non-binding dicta in *Dastar* and ignores Ninth Circuit authority to the
26 contrary. But *Dastar* entirely eliminated false authorship claims as a basis for
27 liability. *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 37 (2003).
28 In dicta, the Supreme Court opined that if a video producer who copied defendant’s

1 work “were, in advertising or promotion, to give purchasers the impression that the
2 video was quite different from that series” then that plaintiff “*might*” have a
3 misrepresentation claim under Section 43(a)(1)(B). *Id.* at 38 (emphasis added).
4 Instructed by *Dastar*’s reasoning, the Ninth Circuit narrowly construed the “nature,
5 characteristics, qualities” language in Section 43(a)(1)(B) to refer only to
6 “*characteristics of the good itself*, such as the original song and artist of the
7 karaoke recording, and the quality of its audio and visual effects.” *Sybersound*
8 *Recs., Inc. v. UAV Corp.*, 517 F.3d 1137, 1144 (9th Cir. 2008) (emphasis added).
9 Other courts in this circuit have since followed suit. Mem. pp. 17-18.

10 Anderson twists herself into knots in attempts to distinguish *Dastar*,
11 *Sybersound*, and their progeny, relying on an unpublished case, *Zobmondo Ent. LLC*
12 *v. Imagination Int’l Corp.*, 2009 WL 8714439 (C.D. Cal. June 23, 2009). But
13 *Zobmondo* only further proves Defendants’ point, as the court permitted the claim to
14 proceed on limited grounds, going to great lengths to explain that *Dastar* and
15 *Sybersound* did not bar that particular claim because “[t]he only question is who
16 physically manufactured the first such board game.” *Id.* at *4 (emphasis added).
17 Anderson’s claim does not fall into such a narrow lane. Rather, her Lanham Act
18 claim concerns who created the exercises in TSS’s classes—Anderson or Roup, a
19 quintessential false authorship claim barred by *Dastar*. And because Anderson
20 does not allege that Defendants have mischaracterized the “nature, characteristics,
21 qualities” of any goods or services (which are narrowly defined under *Sybersound*)—
22 as opposed to their source or Roup’s purpose and history in creating TSS—the
23 Lanham Act claim fails as a matter of law.

24 C. Anderson’s Contract Claim Fails as a Matter of Law

25 1. There is no question that the TA Method, and the exercise movements and
26 routines that comprise it, are available to the public via in-person classes, DVDs, and
27 streaming videos—a fact that Anderson freely admits. FAC ¶¶ 21-24. Thus, any
28 information that Roup learned while employed at TSS that was publicly disclosed in

1 any manner cannot form the basis for a confidentiality breach claim, *see* Dkt. 15-2,
2 Ex. A, p. 4; Ex. B, p. 11. For example, the allegation that Roup had access to
3 “nonpublic transcriptions of choreography routines,” which allegedly detailed “how
4 to perform them,” FAC ¶ 31, does not help Anderson because TANY’s routines were
5 publicly performed to its clients, and the “choreography” thus lost any confidential
6 protection. Anderson has no answer to this obvious bar to her claim except to state
7 that it is for another day. Opp. p. 18. But the question of public disclosure is readily
8 admitted in the FAC and the contract incorporated by reference; the issue is therefore
9 appropriate for determination on a motion to dismiss.

10 TANY attempts to circumvent this public-disclosure obstacle by pointing to
11 the FAC’s allegation that “the full benefit of the TA Method cannot be realized”
12 simply by watching the videos or attending a class; rather, she asserts, “knowing the
13 proprietary reasoning and methodology behind the movements and how and why to
14 sequence them in a certain way” is necessary. FAC ¶ 26; Opp. p. 18 n.9. This
15 allegation is as nonsensical as it is illustrative of TANY’s failure to state a claim.
16 Indeed, Anderson fails to allege facts explaining how this supposed “reasoning”
17 cannot be learned by simply watching her videos or taking her classes. Does the
18 individual taking Anderson’s class not realize its full benefit because she was not
19 made privy to the same “proprietary reasoning” as TANY’s trainers? Anderson does
20 not allege how that could be so.

21 At bottom, TANY’s breach claim attempts to rewrite the plain public-
22 disclosure carve-out by asserting that there is some secret reasoning behind the TA
23 Method and that, once having been provided such “reasoning,” Roup may not operate
24 a competing fitness business lest she happen to use, consciously or not, even a
25 fragment of that “reasoning” in some unspecified way. Such a theory utterly fails to
26 meet the plausibility pleading standard, and Anderson’s other unspecified,
27 “information and belief” allegation that Defendants used “Confidential Information”
28 relating to TANY’s business operations, customers, program structure, customer

1 intake methods, and employees (FAC ¶ 38) fails for this same reason. *See, e.g.,*
2 *Pellerin v. Honeywell Int'l, Inc.*, 877 F. Supp. 2d 983, 990-91 (S.D. Cal. 2012)
3 (dismissing breach of contract claim where counterclaimant failed to plead “what the
4 ‘trade secrets and/or confidential information’ are or whether the confidential
5 information falls within the terms of the agreements”) (collecting cases).

6 2. Anderson’s attempt to enforce the Trainer Agreement in this manner, as
7 described above, is proof positive that the confidentiality covenant is a facial and as-
8 applied invalid restriction on trade under California Business & Professions Code
9 § 16600. Contra Anderson, there is nothing “narrowly tailored” about the
10 confidentiality provision to protect legitimate interests, particularly given the manner
11 in which she attempts to enforce it here. That covenant and Anderson’s attempted
12 use of it plainly violate Section 16600 as a matter of law.

13 Despite TANY’s assurance that “[f]ormer employees, like Roup, are free to
14 establish and conduct their own choreography-based fitness companies; they just
15 cannot use Plaintiffs’ Confidential Information in doing so” (Opp. p. 19), there would
16 be no distinction between a former TANY trainer who replicates standard, unoriginal
17 movements that Anderson publicly uses in her workouts (admittedly non-confidential
18 information) and the same trainer who replicates those standard movements but
19 “knows” in her head the supposed “reasoning” behind those movements. Thus, the
20 confidentiality provision here has the same effect as the overly broad provision in
21 *Brown v. TGS Mgmt. Co., LLC*, 57 Cal. App. 5th 303, 316-17 (2020), review denied
22 (Feb. 24, 2021), and would substantially restrain Roup from ever creating her own
23 dance-based fitness business, including by placing her under the fear that Anderson
24 might attempt to enforce the provision based on nothing but unsupported allegations
25 that Roup had previously learned proprietary methods. *See* Mem. pp. 19-21.
26 Anderson’s attempt to distinguish *Brown* therefore fails and only proves Defendants’
27 point that, like in *Brown*, the provision at issue is “strikingly broad” and
28 unenforceable. *See also Action Learning Sys., Inc. v. Crowe*, 2014 WL 12564011, at

1 *12 (C.D. Cal. Aug. 11, 2014) (“These [confidentiality] provisions, read literally,
2 would include nearly everything related to the educational field that Defendants saw,
3 learned, observed, or had access to during their nearly 10-year employment with
4 [plaintiff]. As Defendants point out . . . they would essentially need a lobotomy in
5 order to continue working in the educational field without violating these
6 restrictions.”).

7 3. Finally, in opposition, Anderson effectively concedes Defendants’ point
8 that she has brought a claim based on a superseded contract. Thus, even if she could
9 state a claim—and she cannot for the reasons stated—amendment would be required
10 to allege breach of the June 2011 Trainer Agreement.

11 **D. Anderson’s UCL Claim Fails Because She Has Not Alleged Any**
12 **Independently Wrongful or Fraudulent Conduct**

13 Anderson’s UCL claim fails because it is based on three allegedly unfair or
14 fraudulent practices, each of which is derivative of other failed claims: *i.e.*,
15 allegations that Defendants (1) used “confidential information” to form and operate
16 TSS; (2) continued to use the confidential information to create TSS videos; and (3)
17 made the same supposed misstatements as in the Lanham Act claim. FAC ¶ 71.
18 Aside from a vague statement that Roup’s unfair and fraudulent business acts
19 “include, but are not limited to” these acts, Anderson identifies no other allegedly
20 wrongful business act upon which she bases her UCL claim. Thus, her claim is based
21 on Roup’s alleged use of confidential information in breach of the Trainer Agreement
22 and misrepresentations that violate the Lanham Act, both which fail on their own
23 terms and therefore doom Anderson’s UCL claim. Mem. pp. 12-22.

24 In opposition, Anderson attempts to create daylight between her UCL claim
25 and the Lanham Act and contract claims, arguing that somewhere in the FAC are
26 UCL allegations that are distinct from her underlying contract and Lanham Act
27 claims. Opp. p. 21. But Anderson’s Opposition fails to identify these mystery
28 allegations and the FAC fails to plead plausible facts to support such argument, and

1 the cases she relies on merely set forth general standards for UCL claims and do not
2 support her claim specifically. Here, the UCL claim is plainly derivative of the
3 Lanham Act and contract claims and, as a result, fails as a matter of law because
4 those predicate claims fail.⁴

5 **E. The Anti-SLAPP Motion Should be Granted**

6 In their Motion, Defendants established that the anti-SLAPP law applies to the
7 speech-based portion of the UCL claim (prong 1); thus, the burden shifted to
8 Anderson to establish a likelihood of prevailing (prong 2). But Anderson failed to
9 carry that burden for the reasons explained in the Motion and above: *i.e.*, the UCL
10 claim based on Roup's speech is derivative of her failed Lanham Act claim.

11 Anderson erroneously argues that the commercial speech exemption of Cal.
12 Civ. Proc. Code § 425.17(c) applies to Roup's autobiographical statements.
13 Anderson carries the burden to establish the applicability of this exemption, which is
14 to be "narrowly construed,"⁵ but she cannot do so, as the California Supreme Court
15 has confirmed that this provision "exempts 'only a subset of commercial speech'—
16 specifically, comparative advertising." *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal.
17 5th 133, 147 (2019). Plaintiffs do not assert that Roup's statements are comparative
18 advertising, nor could they, and their argument fails for this reason alone.

19 Moreover, even if the exemption could somehow reach Roup's non-covered
20 statements, her two biographical sentences do not meet the exemption's required
21 elements. First, Roup's biographical statements are not "representations *of fact* about
22 that person's or a business competitor's business *operations, goods, or services*,"

23 ⁴ Anderson again erroneously states that the UCL claim may not be decided on the
24 pleadings; but courts routinely dismiss UCL claims in similar circumstances.
25 *Sybersound*, 517 F.3d at 1153 (affirming dismissal of UCL claim where plaintiff
26 could not state a claim under the Lanham Act, among other grounds); *R and A Synergy*, 2019 WL 4390564, at *15 (dismissing UCL claim where "Plaintiff's state law claim for unfair competition realleges the same facts and reasserts the same arguments as embodied by Plaintiff's Lanham Act claims").

27 ⁵ *Simpson Strong-Tie Co., Inc. v. Gore*, 49 Cal. 4th 12, 22 (2010). Anderson, as the
28 party seeking the benefit of the commercial speech exemption, has the burden of proof on each element. *Id.* at 26.

1 Cal. Civ. Proc. Code § 425.17(c)(1) (emphases added)—one of the same reasons the
2 Lanham Act claim fails—but rather about her life story and personal views. Nor
3 were Roup’s statements made “for the purpose of obtaining approval for, promoting,
4 or securing sales.” Cal. Civ. Proc. Code § 425.17(c)(1). Rather, the statements are
5 autobiographical and contain Roup’s personal take on issues of women’s body image
6 and physical fitness, including her explanation that her goal “is to empower women
7 through movement, to stand in their bodies with confidence and strength, and to feel
8 their best self,” and noting her own journey “[a]s someone who has struggled with
9 body confidence in my early twenties, I understand what most women have felt at
10 some point in their life.” Dkt. 15-2, Ex. C. The statements and their characteristics
11 (made by a fitness celebrity about public issues) thus establish both that the narrow
12 commercial speech exemption does not apply and that prong 1 of the anti-SLAPP
13 statute is met.⁶

14 Even if the commercial speech exemption could be said to apply, Defendants’
15 motion is facially meritorious and miles apart from the egregious facts that
16 established frivolousness in *L.A. Taxi Coop., Inc. v. The Indep. Taxi Owners Assn. of*
17 *Los Angeles*, where the defendants had purchased “search advertising” to divert
18 internet traffic away from plaintiff’s services towards defendants’ own. 239 Cal.
19 App. 4th 918, 921 (2015). Here, Roup simply provides biographical details and her
20 take on public issues. Thus, rather than support Anderson, her reliance on *L.A. Taxi*
21 only underscores the non-commercial nature of Roup’s speech, and the frivolousness
22 of Anderson’s attack on it. The Motion to Strike should therefore be granted.

23 **III. CONCLUSION**

24 For all the foregoing reasons, Plaintiffs’ FAC should be dismissed with
25 prejudice and the speech-based portion of the UCL claim struck with prejudice

26
27 ⁶ Anderson’s cases that seek to disprove prong 1 are distinguishable as they were
28 about a “private dispute,” even if they involved public people. *See, e.g., Albanese v. Menounos*, 218 Cal. App. 4th 923, 936 (2013).

1 pursuant to California's anti-SLAPP law. Because Plaintiffs have not suggested any
2 manner in which their claims might be saved by amendment, and they could not be
3 as a matter of law, leave to amend should be denied.⁷

4
5 Dated: October 18, 2022

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6
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27 ⁷ Should the Court dismiss the federal claims but permit amendment on any state law
28 claim, it should nevertheless decline to exercise supplemental jurisdiction over such
claim(s) and dismiss the action. *See* Mem. pp. 24-25. Plaintiffs do not contest this.